



CITY COUNCIL STAFF REPORT

MEETING DATE: July 17, 2013

AWARD OF PROFESSIONAL SERVICES CONTRACT TO PROVIDE TESTING SERVICES FOR PUBLIC WORKS PROJECTS

RECOMMENDED ACTION(S):

Authorize the City Manager to execute a two-year consultant agreement with RMA Group of Northern California in the amount not to exceed \$100,000 to provide Public Works testing services on an as-needed basis for FY 13/14 (\$50,000) and FY 14/15 (\$50,000), subject to review and approval by the City Attorney.

EXECUTIVE SUMMARY:

Due to the small staffing level of the Public Works field inspection team, it is imperative to augment their services with a contract inspection testing firm. This is consistent with the City Council's long term labor strategy of utilizing contract services for peak workloads. The contract inspection testing firm will be available on an as-needed basis to ensure both land development off-site improvements and City-funded capital improvements are completed in a timely manner and with the proper oversight.

On June 1, 2013, Staff sent out a Request for Proposals to seven qualified firms for providing Public Works testing services on an as-needed basis. Four proposals were received on June 21, 2013. Staff reviewed and judged each proposal independently to determine the most qualified firm for a two year term agreement.

Upon reviewing the four proposals, RMA Group stood out as demonstrating strong expertise and familiar background and understanding of the City's projects. RMA Group of Northern California was also selected for their ability to provide complete special testing services utilizing their laboratory facility. Furthermore, they are certified and recognized for their soils and physical materials testing site by State and Federal agencies. Staff recommends the award of this testing services contract to RMA Group of Northern California.

Should this contract be approved, RMA's services will be employed for both Capital Improvements Program (CIP) projects and developer initiated projects. When used for CIP projects, those projects will be invoiced directly for their services. When used for developer initiated projects, the costs will be paid out of the contract services line item in the approved Public Works Engineering budget (206.5410.42231).

FISCAL/RESOURCE IMPACT: The cost for the contract testing services is not to exceed \$50,000 in each of the fiscal years of 13/14 and 14/15. In FY 13/14, services will be funded from Community Development Engineering Contract Services (206.5410.42231) in the amount of \$25,000 and the remainder of \$25,000 will be charged to individual Capital Improvement Project accounts, with appropriate funding as budgeted and approved in the FY 13/14 CIP.

Agenda Item # **16**

Prepared By:

Julie Burt
Senior Engineer

Approved By:

K. Byrd
Public Works Director

Submitted By:

SK
City Manager

THIS PAGE LEFT BLANK INTENTIONALLY

CONSULTANT AGREEMENT RMA GROUP

THIS AGREEMENT is entered into and becomes effective on _____ (Effective Date), by and between the CITY OF MORGAN HILL, a municipal corporation, ("CITY"), and RMA Group a California corporation ("CONSULTANT") hereinafter referred to collectively as "Parties." In consideration of the promises and the mutual covenants contained in this Agreement, the Parties agree as follows:

1. **City Authority.** This Agreement is entered into pursuant to action of the Morgan Hill City Council taken on _____, _____, 20____.
2. **Term of Agreement.** This Agreement shall cover services rendered from the Effective Date of this Agreement until September 30, 2015 at which time CONSULTANT'S services shall be completed. The City Manager is authorized to extend the term of this Agreement for a maximum period of one year. Any such extension shall be in writing and signed by both Parties to this Agreement.
3. **Scope of Service.** The services to be performed by CONSULTANT shall be construction testing services as further described in **Exhibit A.**
4. **Compensation.** CONSULTANT shall be compensated as follows:
 - 4.1. **Amount.** \$100,000.00. Total compensation under this Agreement shall not exceed One Hundred Thousand dollars and shall be billed based on the rate and basis set forth in **Exhibit B.**
 - 4.2. **Billing.** CONSULTANT shall provide CITY with a monthly invoice containing the dated, detailed, and itemized descriptions of all services performed and expenses incurred (if such expenses are reimbursable pursuant to Exhibit B) by CONSULTANT. Any rate charged shall be prorated where services are interrupted or not provided for any rate period (for example, any monthly rate charge should be prorated when services were interrupted or provided for only part of the month). For services billed on an hourly rate, the minimum unit of billed time shall not exceed one tenth of one hour. CITY shall pay for services and expenses (if so provided in Exhibit B) up to the limit of compensation set forth above, that in the CITY's judgment were necessary and reasonable. Services for work performed and expenses incurred in excess of the total compensation set forth in paragraph 4.1 above shall be at no cost to CITY.
5. **Termination.** CITY or CONSULTANT shall have the right to terminate this Agreement, without cause, by giving thirty (30) days' written notice or less under urgent circumstances. Upon such termination, CONSULTANT shall submit to CITY an itemized statement of services performed for which compensation has not been paid. CITY may require CONSULTANT to complete certain work product or documents and CONSULTANT shall deliver to CITY all documents in its possession without additional compensation to CONSULTANT.
6. **Performance of Work.** CONSULTANT represents that it is qualified by virtue of experience, training, education, and expertise to accomplish these services. Services shall be performed by CONSULTANT in accordance with professional practices in a manner consistent with a level of care, competence and skill exercised by qualified members of the CONSULTANT'S profession. By delivery of completed work, CONSULTANT certifies that the work conforms to the requirements of this Agreement and all applicable federal, state and local laws.

7. **Insurance Requirements.**

7.1. **Commencement of Work.** CONSULTANT shall not commence work under this Agreement until it has obtained CITY approved insurance. For general liability insurance policies, CONSULTANT shall provide CITY, prior to commencement of work, with a separate endorsement which states that the policy contains the following language:

- The CITY, its elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers are named as additional insureds; and,
- the insurer waives the right of subrogation against CITY and CITY'S elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers; and,
- insurance shall be primary non-contributing.

CONSULTANT shall furnish CITY with copies of all policies or certificates subject to this Agreement, whether new or modified, promptly upon receipt. No policy subject to this Agreement shall be canceled or materially changed except after thirty (30) days' notice by the insurer to CITY.

7.2. **Workers' Compensation Insurance.** CONSULTANT and all subcontractors shall maintain Workers' Compensation Insurance, as required by law.

7.3. **Insurance Types and Amounts.** CONSULTANT shall maintain comprehensive general liability insurance; professional errors and omissions liability insurance (required for professional and technical service consultants only); and automobile insurance each with policy limits of at least \$1,000,000 per occurrence for general liability, \$1,000,000 per accident for automobile liability and \$1,000,000 per claim for professional errors or omissions (for professional and technical service consultants only).

7.4. **Acceptability of Insurers.** All insurance required by this Agreement shall be carried only by responsible insurance companies licensed and admitted, or otherwise legally authorized to carry out insurance business, in California with a current A.M. Best's rating of no less than A:VII.

8. **Non-Liability of Officials and Employees of the CITY.** No official or employee of CITY shall be personally liable for any default or liability under this Agreement.

9. **Compliance with Law.** CONSULTANT and its officers, employees, agents, and subcontractors shall comply with all applicable laws, ordinances, administrative regulations, and permitting requirements in carrying out their obligations under this Agreement. CONSULTANT and its officers, employees, agents, and subcontractors covenant there shall be no discrimination based upon race, color, creed, religion, gender, marital status, age, sexual orientation, national origin, mental disability, physical disability, medical condition, or ancestry, in any activity pursuant to this Agreement.

10. **Independent Contractor.** CONSULTANT is an independent contractor and not an agent or employee of CITY.

11. **Confidentiality.** All data, documents, or other information received by CONSULTANT from CITY or prepared in connection with CONSULTANT'S services under this Agreement are deemed confidential and shall not be disclosed to any third party by CONSULTANT without prior written consent by CITY.

12. **Conflict of Interest and Reporting.** CONSULTANT shall at all times avoid conflict of interest or appearance of conflict of interest in performance of this Agreement.

13. **Notices.** All notices shall be personally delivered or mailed, via first class mail to the below listed address. These addresses shall be used for delivery of service of process. Notices shall be effective five (5) days after date of mailing, or upon date of personal delivery.

Address of CONSULTANT is as follows:

RMA Group
6296 San Ignacio Ave, Suite A
San Jose, CA 95119

Address of CITY is as follows:

Development Services Center	with a copy to:
City of Morgan Hill	City Clerk
17575 Peak Avenue	City of Morgan Hill
Morgan Hill, CA 95037	17575 Peak Avenue
	Morgan Hill, CA 95037

14. **Licenses, Permits and Fees.** CONSULTANT shall obtain a City of Morgan Hill Business License, all permits and licenses to the extent required by ordinances, codes and regulations of the federal, state and local government.

15. **Maintenance of Records.**

15.1. **Maintenance.** CONSULTANT shall prepare, maintain, and preserve all reports and records that may be required by federal, state, and CITY rules and ordinances related to services provided under this Agreement. CONSULTANT shall maintain records for a period of at least 3 years after receipt of final payment under this Agreement. If any litigation, claim, negotiation, audit exception, or other action relating to this Agreement is pending at the end of the 3 year period, then CONSULTANT shall retain said records until such action is resolved.

15.2. **Access to and Audit of Records.** The CITY shall have the right to examine, monitor and audit all records, documents, conditions, and activities of the CONSULTANT and its subcontractors related to services under this Agreement. Pursuant to Government Code Section 8546.7, if this Agreement involves the expenditure of public funds in excess of \$10,000, the Parties to this Agreement may be subject, at the request of the CITY or as part of any audit of the CITY, to the examination and audit of the State Auditor pertaining to matters connected with the performance of this Agreement for a period of three years after final payment under the Agreement.

15.3. **Ownership of Work Product.** All documents or other information developed or received by CONSULTANT for work performed under this Agreement shall be the property of CITY.

CONSULTANT shall provide CITY with copies of these items upon demand or upon termination of this Agreement.

16. **Familiarity with Work.** By executing this Agreement, CONSULTANT represents that: (1) it has investigated the work to be performed; (2) it has investigated the site of the work and is aware of all conditions there; and (3) it understands the difficulties and restrictions of the work under this Agreement. Should CONSULTANT discover any conditions materially differing from those inherent in the work or as represented by CITY, it shall immediately inform CITY and shall not proceed, except at CONSULTANT'S risk, until written instructions are received from CITY.

17. **Time of Essence.** Time is of the essence in the performance of this Agreement.

18. **No Assignment.** Neither this Agreement nor any portion shall be assigned by CONSULTANT, without prior written consent of CITY.

19. **Attorney Fees.** In any legal action, dispute or arbitration arising out of or relating to this Agreement, the prevailing party shall be entitled to an award of its reasonable attorney fees, costs and expenses incurred.

20. **Defense and Indemnification.**

20.1. **Defense and Indemnification.** CONSULTANT shall, to the fullest extent permitted by law, indemnify, defend and hold harmless CITY, its elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers ("INDEMNITEES") from and against any and all claims, liabilities, expenses, liens, or damages of any nature, including liability for bodily injury, property damage or personal injury, and including reasonable attorneys' fees and expenses, that arise out of, pertain to, or relate to the performance of this Agreement or the failure to comply with any obligations contained in this Agreement by CONSULTANT, and/or its agents, officers, employees, subcontractors, or independent contractors ("CLAIM").

20.2. **Exceptions.** CONSULTANT is not required to indemnify INDEMNITEES against liability for bodily injury, property damage or personal injury, or any other loss, damage or expense arising from the sole negligence or willful misconduct of the CITY.

20.3. **Not limited by insurance.** The indemnity, defense and hold harmless provisions of this Agreement apply to all CLAIMs alleged against an INDEMNITEE, regardless of whether any insurance policies are applicable. Policy limits do not act as a limitation upon the amount of indemnification or defense to be provided by CONSULTANT.

20.4. **Right to Offset.** CITY shall have the right to offset against any compensation due CONSULTANT under this Agreement any amount due CITY from CONSULTANT as a result of CONSULTANT's failure to pay CITY promptly any indemnification arising under this Section (20) and any amount due CITY from CONSULTANT arising from CONSULTANT's failure either to (i) pay taxes on amounts received pursuant to this Agreement or (ii) comply with applicable workers' compensation laws.

20.5. **Interpretation.** This Section shall constitute an agreement or contract of indemnity, incorporating the interpretations under California Civil Code Section 2778. It is expressly understood and agreed that the obligation of the CONSULTANT to indemnify the INDEMNITEE shall be as broad and inclusive as permitted by the laws of the State of California and shall survive termination of this Agreement.

21. **Modification.** This Agreement constitutes the entire Agreement between the Parties and supersedes any previous agreements, oral or written. This Agreement may be modified or provisions waived only by subsequent mutual written Agreement executed by CITY and CONSULTANT.

22. **Governing Law and Venue.** This Agreement shall be construed in accordance with the laws of the State of California. This Agreement was entered into and is to be performed in the County of Santa Clara. Any action or dispute arising out of this Agreement shall only be brought in Santa Clara County.

23. **Interpretation.** This Agreement is a negotiated document and shall be deemed to have been drafted jointly by the Parties, and no rule of construction or interpretation shall apply against any particular Party based on a contention that the Agreement was drafted by one of the Parties including, but not limited to, California Civil Code § 1654, the provisions of which are hereby waived. This Agreement shall be construed and interpreted in a neutral manner.

24. **Preservation of Agreement.** If any term, provision, covenant, or condition of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the rest of the Agreement shall remain in full force and effect and shall in no way be affected or invalidated.

//

//

//

//

//

//

//

//

25. **Authority to Execute.** Those individuals who are signing this Agreement on behalf of entities represent and warrant that they are, respectively, duly authorized to sign on behalf of the entities and to bind the entities fully to each and all of the obligations set forth in this Agreement.

IN WITNESS THEREOF, these Parties have executed this Agreement on the day and year shown below.

AS SET FORTH IN CA. CORP. CODE § 313, TWO SIGNATURES ARE REQUIRED FOR CALIFORNIA CORPORATIONS:

- (1) CHAIRPERSON OF THE BOARD, PRESIDENT, OR VICE PRESIDENT; AND
(2) SECRETARY, ASSISTANT SECRETARY, CHIEF FINANCIAL OFFICER OR ASSISTANT TREASURER.

ATTEST:

CITY OF MORGAN HILL

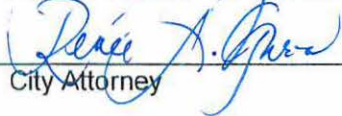
City Clerk/Deputy City Clerk

Michelle Wilson

Print Name

Date: _____

APPROVED AS TO FORM:



City Attorney

Renee Gurza

Print Name

Date: 7.9.2013

City Manager

Steve Rymer

Print Name

Date: _____

RMA Group



By:

Title: Ed Lyon, President

Print Name and Title of Signer.

If Corporate: Chairman, President or
Vice President

Date: 7/09/13



By:

Title: Juanita Sue Lyon, Sec/Treas

Print Name and Title of Signer.

If Corporate: Secretary, Assistant
Secretary, Chief Financial Officer or
Assistant Treasurer

Date: 7/09/13

**EXHIBIT A
SCOPE OF SERVICES**

See Attached

EXHIBIT B
SCHEDULE OF COMPENSATION RATES

See attached

EXHIBIT A AND B

D. List of Tasks and Special Inspection Services:

All services shown below for the Contract Inspector shall provide fully typed reports (2 copies min) verifying and detailing results of inspections and/or tests.

Inspection including compaction testing A/C and Soil/Sampling, A/C Placement	\$ <u>83.00</u> /HR
Steel Inspection	\$ <u>84.00</u> /HR
Concrete Inspection	\$ <u>84.00</u> /HR
Welding Inspection	\$ <u>84.00</u> /HR
Moisture Density Curve per ASTM	\$ <u>235.00</u> Ea
Sieve Analysis	\$ <u>115.00</u> Ea
R Value	\$ <u>260.00</u> Ea
A/C Unit Wt.	\$ <u>460.00</u> Ea
Concrete Cylinders	\$ <u>No Charge</u> Ea Set
Compression Tests	\$ <u>75.00</u> Ea Set

THIS PAGE LEFT BLANK INTENTIONALLY